

RICHARD THORPE
ANNE THORPE

IBLA 81-1096

Decided October 26, 1981

Appeal from decision of Fairbanks District Office, Bureau of Land Management, declaring unpatented mining claims null and void ab initio or abandoned and void. F 52422 through F 52427.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Effect of

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Mining claims are properly declared abandoned and void where copies of the notices of location are not filed with the proper Bureau of Land Management office within the time periods prescribed by sec. 314 of the Federal Land Policy and Management Act of 1976.

APPEARANCES: Anne Thorpe, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Anne Thorpe appeals two decisions of the Fairbanks District Office, Bureau of Land Management (BLM), each dated June 26, 1981. One decision declared the Last Chance #1 through Last Chance #3 mining claims, F 52422 through F 52424, null and void because the land involved was withdrawn from operation of the mining laws by Public Land Order (PLO) No. 5250 of September 12, 1972, before the claims were located.

The other decision declared the Last Chance #4 through Last Chance #6 mining claims, F 52425 through F 52427, abandoned and void because copies of the notices of location was not filed with BLM within 90 days after the claims were located, as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). Each of the six claims at issue was located November 10, 1976, and copies of the six location notices were filed with BLM June 8, 1979.

The claims lie along Buckley Bar Creek, a tributary of Birch Creek, in protracted T. 6 N., Rs. 15 and 16 E., Fairbanks meridian. The area was placed in the Steese National Conservation Area pursuant to section 401 of the Alaska National Interest Lands Conservation Act of December 2, 1980, P.L. 96-487 (to be codified as 16 U.S.C. § 460mm), and is no longer open to location of mining claims. PLO 5250, 37 FR 18730 (Sept. 15, 1972), amended PLO 5179 (Mar. 16, 1972), by withdrawing all land within 1 mile of mean high water in Birch Creek River in T. 6 S., Rs. 15 and 16 E., Fairbanks meridian, inter alia, from location under the mining laws.

Appellant states that the claims were located in accordance with State law and were duly recorded in the Fairbanks recording office. She contends that the requirements of 43 CFR 3833.2 were complied with, although she does not deny that the copies of the location notices were not sent to BLM until 1979. She argues that none of the claims is within the area withdrawn by PLO 5250 as she carefully paced out a mile from Birch Creek before she made her locations.

[1] It is well settled that mining claims located on lands within a withdrawal and not open to mineral entry are properly declared null and void. Harl Rightmire, 53 IBLA 125 (1981); Northwest Explorations, Inc., 52 IBLA 87, 88 I.D. 31 (1981); Gerald Byron Bannon, 40 IBLA 162 (1979); Barry C. Binning, 39 IBLA 390 (1979). So, to the extent that the Last Chance #1, #2, and #3 are within the area withdrawn from mining location by PLO 5250, BLM properly declared the claims to be null and void ab initio. If parts of the claims are not within the withdrawn area, they are subject to the same deficiency which affects the Last Chance #4, #5, and #6, to wit, copies of the notices of location were not filed with BLM within 90 days after location.

[2] Section 314 of FLPMA, supra, requires the owner of an unpatented mining claim located after October 21, 1976, to file, within 90 days after the date of location, a copy of the official record of the notice of location in the office of BLM designated by the Secretary of the Interior. 43 CFR 3833.1-2(a) defines "file" as meaning "being received and date stamped by the proper BLM office." Filing is accomplished only when the document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f). Failure to file timely is considered conclusively to constitute abandonment of

the mining claims under section 314 of FLPMA. See Omco, Inc., 55 IBLA 77, 79 (1981). This Board has no authority to excuse a late filing or to waive the consequences of noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As none of the location notices for the claims at issue was filed with BLM within the proper time period, BLM properly declared the claims to be abandoned.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

